

1 JACKLIN CHOU LEM (CSBN 255293)
2 HOWARD J. PARKER (WSBN 07233)
3 United States Department of Justice
4 Antitrust Division
5 450 Golden Gate Avenue
6 Box 36046, Room 10-0101
7 San Francisco, California 94102
8 Telephone: (415) 934-5300
9 Facsimile: (415) 934-5399
10 jacklin.lem@usdoj.gov

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CAPACITORS
ANTITRUST LITIGATION

All Direct Purchaser Actions,
Case No. 3:14-cv-03264-JD

Case No. 3:14-cv-03264-JD

**REDACTED DOCUMENT SOUGHT TO
BE SEALED**

**UNITED STATES' OPPOSITION TO
UNITED CHEMI-CON, INC.'S
PETITION FOR DISCLOSURE OF
[REDACTED] GRAND JURY
TESTIMONY AND EXHIBITS**

Master Docket No. 3:17-md-2801-JD

Date: To be set by the Court
Time: To be set by the Court
Courtroom 11
Hon. James Donato

The United States respectfully opposes the petition of United Chemi-Con, Inc. for the disclosure of grand jury testimony and certain related exhibits. The Supreme Court set out the applicable standard in *Douglas Oil Co. of California v. Petrol Stops Northwest*, 441 U.S. 211, 222-223 (1979):

Parties seeking grand jury transcripts under Rule 6(e) must show that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need

1 for disclosure is greater than the need for continued secrecy, and that their request is
 2 structured to cover only material so needed. Such a showing must be made even when
 3 the grand jury whose transcripts are sought has concluded its operations [D]isclosure
 4 is appropriate only in those cases where the need for it outweighs the public interest in
 5 secrecy, and that the burden of demonstrating this balance rests upon the private party
 6 seeking disclosure. [footnote omitted]

7 In the case here, the criminal matter to which the requested disclosure pertains is not
 8 concluded. Eight indicted individual defendants remain abroad as fugitives; none have appeared
 9 in the United States to face the charges against them. See *U.S. v. Takeshi Matsuzaka, et al.*,
 10 4:15-cr-00163 (N.D. Cal. 2016). Three of those fugitives were employed by the Chemi-Con
 11 family of companies [REDACTED]

12 [REDACTED].
 13 The interests that underlie grand jury secrecy were not obviated by the conclusion of the
 14 case against United Chemi-Con's parent company, Nippon Chemi-Con, which pled guilty and
 15 was sentenced in 2018. [REDACTED]

16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 In a criminal case, the carefully balanced rules of criminal discovery do not ordinarily
 20 allow for this kind of advance disclosure to criminal defendants who have not yet made an initial
 21 appearance. Indeed, the government and the Court took care to minimize the risk of unwarranted
 22 disclosure, such as to fugitives, by providing in the protective order in the criminal case against
 23 Nippon Chemi-Con that, "At the conclusion of the above-captioned case (including but not
 24 limited to any post-trial proceedings or appeal), the defendant agrees to either destroy all
 25 Protected Material or return the Protected Material as directed by the producing party." 4:27-cr-
 26 00540-JD, Document 42 at p.4. As such, now that the case against Nippon Chemi-Con has
 27 concluded, the government has requested that Chemi-Con destroy the materials the government

28 //

1 produced to it in criminal discovery [REDACTED]
2 [REDACTED].

3 Moreover, the need for continuing grand jury secrecy would not necessarily end even if
4 the criminal case were entirely concluded and even if there were no outstanding prosecutions
5 such as those against fugitives in this case. *U.S. v. Atlantic Container Line, Ltd.*, 511 F.Supp.
6 115 (D.D.C. 1980). For example, the assurance that secret testimony given in the grand jury will
7 remain secret encourages all witnesses to be candid and forthcoming, lessening concern that
8 parties against whom testimony is given will know what has been said and will retaliate or
9 attempt to influence the testimony given in the first place.

10 For these reasons, the United States opposes the requested disclosure.

11
12
13 Dated: February 20, 2020

Respectfully Submitted,

14 /s/ Howard J. Parker
15 JACKLIN CHOU LEM
16 HOWARD J. PARKER
17 Trial Attorneys
U.S. Department of Justice
Antitrust Division
18
19
20
21
22
23
24
25
26
27
28